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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE B-205034

DATE: October 28, 1981

MATTER OF: The Mark Twain Hotel

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render a decision without obtaining a report from the agency.
2. Since protests based on alleged improprieties in specifications are required, by 4 C.F.R. § 21.2(b), to be filed prior to bid opening, protest against a requirement for a shower with bath and sink in a room separate from the bedroom is not timely when not raised until after bid opening.
3. The contracting officer's determination of nonresponsibility was reasonable and will not be disturbed by the GAO where the preaward inspection revealed an inability by the bidder to perform in accordance with the requirements of the solicitation.

The Mark Twain Hotel protests award of a contract for 1-night lodging and meals for male and female personnel during processing by the United States Army under invitation for bids (IFB) DAAJ04-81-B-0010 issued by the St. Louis Area Support Center. Bids were opened on August 27, 1981. The protester was the low bidder but on inspection was found incapable of satisfying the specification requirements that showers be furnished with a bathtub and that the sink be located in an area partitioned from the bedroom. The protester contends these specification provisions exceed the requirements of the agency.

This case falls within the ambit of our decisions that where it is clear from a protester's initial

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submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 21 (1981). Resource Analysis Inc., B-202920, May 26, 1981, 81-1 CPD 410.

There is no indication that the protester raised any objections to the specifications prior to bid opening. Section 21.2(b)(1) of our Bid Protest Procedures requires that a protest against the terms of an invitation for bids be filed prior to bid opening. Since the protest against the specifications was not raised until after bid opening, the protest is, to this extent, untimely and will not be considered.

Although the protester took no exception to the specifications in its bid, on inspection the protester's facilities were found not to be in compliance with the IFB specifications. Paragraph C.10e, page 7, of the IFB provided: "Bathrooms provided under this contract shall contain the following minimum furnishings and supplies: * * * e. Bathtub with shower." All of the rooms inspected were equipped with a shower unit instead of the required bathtub with shower unit.

The IFB also provided that the bathrooms must be located in a room separate from the sleeping area and, while the sink might be located outside the enclosed bathroom space, it must be in a small anteroom to the bathroom which is separate from the sleeping area. "* * * (s)inks located so that they are a part of the sleeping area are not acceptable." Seven of the 10 rooms inspected were equipped with the sink located in the sleeping area.

The protester's inability to perform in accordance with the specifications involves a matter of responsibility and our Office will not disturb the contracting officer's determination of responsibility or nonresponsibility absent a reasonable basis for the determination. One of the important elements of a bidder's responsibility is the capability to perform in accordance with the requirements set forth in the solicitation. Leasco Information Products, Inc., et al., B-180460, June 10, 1974, 74-1 CPD 314. On the basis of the preaward inspection, the determination by the contracting officer was reasonable.

The protest is dismissed in part and denied in part.

for *Milton J. Fowler*
Comptroller General
of the United States